

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P. (NPD) No.971 of 2003

K.Bhuvanesh

.. Petitioner

vs.

1.Rakman Bibi
2.Basheer Ahamad
3.Shahul Hameed
4.Noor Mohammed
5.Tmt.Jamul Bibi
6.Tmt.Kader Balu

.. Respondents

Revision Petition filed against the order dated 9.4.2003, passed in R.C.A.No.740/1997, on the file of the VII Judge, Court of Small Causes, Chennai confirming the order dated 26.6.1997 in R.C.O.P.No.33/1992, on the file of the XVI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.V.Ragavachari

For Respondents : Mr.V.Eapen Varghese

ORDER:

This Revision Petition has been filed against the order dated 9.4.2003, passed in R.C.A.No.740/1997, on the file of the VII Judge, Court of Small Causes, Chennai confirming the order dated 26.6.1997 in R.C.O.P.No.33/1992, on the file of the XVI Judge, Court of Small Causes, Chennai.

2. The unsuccessful tenant before both the authorities below is the revision petitioner before this court.

3. The respondents 1 to 6 herein filed RCOP No.33/1992 against the revision petitioner under Sec.10(2)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act') for eviction of the petitioner herein on the ground of wilful default. The revision petitioner resisted the RCOP by contending that the respondents are not the owners of the property and the

building was put up by his father R.Krishnan and the land belonged to Sri Sowmiya Damodara Perumal Devasthanam. The Rent Controller by order dated 26.6.1997 ordered eviction against which an appeal was filed in RCA No.740/1997 and the Appellate Authority also confirmed the order of the Rent Controller and dismissed the Appeal by order dated 9.4.2003 and challenging the order dated 9.4.2003 the above Revision Petition has been filed by the tenant under Sec.25 of the Act.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents. I have also perused the documents and the judgments relied on by them in support of their submissions.

5. The learned counsel for the revision petitioner submitted that when the title of the landlord was denied by the tenant, the Rent Controller should go into the bona fide of such denial and if the denial is bona fide, the parties should be directed to approach the civil court. The learned counsel found fault with the Rent Controller for going into the title elaborately as if it was a civil court. According to the learned counsel, the Appellate Authority has also committed the same mistake of the Rent Controller and therefore both the orders are bad in law and liable to be set aside.

6. He relied on the following judgments in support of his contention:-

- (1) 1963(II) SCJ 475 (Om Prakash Gupta v. Dr.Rattan Singh)
- (2) 1982(I) SCC 223 (Chhaganlal K.Mehta v. P.N.Haribhai)
- (3) 1987(4) SCC 424 (D.Satyanarayana v. P.Jagadish)
- (4) 1990(4) SCC 286 (LIC v. India Automobiles & Co.)
- (5) 1997-1- L.W. 1 (Thangavelu v. Ramadoss)
- (6) 1996-1-L.W. 83 (Annamalai and another v. The Official Receiver, North Arcot Ambedkar District and another)

(7) AIR 2002 S.C. 2171 (A.V.G.P.Chettiar & Sons v. T.Palanisamy Gounder)

(8) AIR 2005 Cal. 281 (Sambhunath Mitra v. Khattan Consultant Ltd.)

7. Per contra, the learned counsel for the respondents submitted that both the authorities below did go into the question of whether the denial is bona fide and having considered that the denial is not bona fide, the order of eviction is passed by the Rent Controller which was confirmed by the appellate authority. Therefore according to him there is no infirmity in the orders passed by the courts below.

8. In RCOP No.33/1992 the respondents herein have stated that the revision petitioner is in arrears of rent from April 1991 to November 1991 and the tenant has deliberately committed wilful default. It was also specifically pointed out in para 4 of the petition that on a previous occasion also the tenant committed wilful default in payment of rent from September 1988 to March 1991 amounting to Rs.3,720/- and the entire arrears was paid after the issue of lawyer's notice dated 12.4.1991 after admitting the default in the reply notice dated 19.4.1991.

9. Even though the tenant has denied the title of the landlord by contending that the land belonged to Devasthanam and his father constructed the building as early as 1950, he did not deny the lawyer's notice dated 12.4.1991 and his reply notice dated 19.4.1991 and also the subsequent payment made by him towards the rental arrears. The lawyer's notice dated 12.4.1991 was marked as Ex.P4 and the reply notice dated 19.4.1991 was marked as Ex.P5. In Ex.P4, the tenant was called upon to pay the entire arrears of rent from September 1988 to March 1991 amounting to Rs.3,720/-. In the reply dated 19.4.1991 (Ex.P5) the tenant contended that when he tendered the rent for the month of August 1988 and also on subsequent date, the respondents herein evaded to accept the rent by stating that the entire rent be kept in the bank in a lump sum and the same would be received after his return from abroad. Further it was stated in Ex.P5, that as per the demand made in Ex.P4, a Demand Draft for Rs.3795/- was enclosed, comprising of a sum of Rs.3,720/-towards the rental arrears and Rs.75/- being the cost of notice dated 12.4.91.

10. Exs.P4 and P5 would make it very clear that the revision petitioner has accepted the landlord-tenant relationship. In Ex.P4 it is also very clearly stated by the landlord that he is the absolute owner of the shop portion under the tenant's occupation on a monthly rent of Rs.120/-. This was not at all denied and the demand in the notice was complied with by not only paying the rental arrears, but also by paying the cost of notice as demanded by the landlord. If at all the tenant's father had put up the building as early as in the year 1990 on the lands owned by Devasthanam, the tenant would have never given a reply as in Ex.P5. This fact was specifically adverted to by both the authorities below to come to a conclusion that the setting up of title by the tenant on Devasthanam and his father cannot be accepted at all. In fact in his cross-examination the tenant deposed that he only signed Ex.P5 but the same was obtained by him under threat and coercion. As rightly observed by both the authorities below that if at all Ex.P5 was obtained by threat and coercion, the tenant would have definitely stated so in the counter statement filed in RCOP No.33/1992 while countering the averments contained in para 4

of the petition filed in RCOP No.33/1992. Therefore this claim of obtaining Ex.P5 under threat and coercion is only an after-thought to get over Ex.P5 and the tenant having admitted the ownership and having paid the rental arrears as contained in Ex.P5 is now estopped from contending that there is no landlord tenant relationship between the parties under Sec.116 of the Indian Evidence Act.

11. In (1982) 1 SCC 223 cited supra, the Hon'ble Supreme Court held that estoppel deals with question of facts and not of rights. A man is not estopped from asserting a right which he had said that he would not assert and there can also be no estoppel against a statute.

12. In the above decision, the Hon'ble Supreme Court dealt with the concept of estoppel as contemplated under Sec.115 of the Indian Evidence Act and discussed the instances under which a case could be brought within the scope of estoppel as defined under Sec.115 of the Indian Evidence Act. But in the case on hand the estoppel is contemplated under Sec.116 of the Indian Evidence Act and therefore the above decision is not useful for the learned counsel for the petitioner.

13. In AIR 2002 S.C. 2171 cited supra, the Hon'ble Supreme Court held that mere giving of undertaking by the tenant to vacate the premises for obtaining stay of execution of eviction decree, does not foreclose a tenant from availing of any statutory remedies available to him by way of appeal or revision or under the Constitution.

14. The case of the Hon'ble Supreme Court is easily distinguishable from the facts of the present case.

15. The learned counsel for the petitioner placed strong reliance on the decision of the Hon'ble Supreme Court reported in (1987) 4 SCC 424 cited supra wherein it was held that when there is a threat of eviction by a person claiming title paramount, i.e., head lessor the tenant is not estopped under Sec.116 of the Evidence Act from challenging the title and the right to maintain the eviction proceedings of the other lessor. The relevant portion of the judgment of the Hon'ble Supreme Court is as follows:-

"3. The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e., head lessor Krishnamurthy, the appellant was not estopped under Section 116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the

respondent P.Jagadish as the lessor. Section 116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words "during the continuance of the tenancy" have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restricted not only in extent but also in time, i.e., restricted to the title of the landlord and during the continuance of the tenancy; and by necessary implications, it follows that a tenant is not estopped, when he is under threat of eviction by the title paramount, from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

4. The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See : Bilas Kunwar v. Desraj Ranjit Singh (ILR (1915) 37 All 557 (PC) and Atyam Veerraju v. Pechetti Venkanna (1966) 1 SCR 831 : AIR 1966 SC 629. The general rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the persons claiming through

the landlord. See : Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Limited (AIR 1937 PC 251 : 169 IC 556 : (1937) 2 MLJ 286. Similarly, the estoppel under Section 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount, no question of estoppel arises under Section 116 of the Evidence Act. See : Adyanath Ghatak v. Krishna Prasad Singh (AIR 1949 PC 124) The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them. The law is stated in Vol. 27 Halsbury's Laws of England, 4th edn., para 238:

238. Eviction under title paramount. In order to constitute an eviction by a person claiming under title paramount, it is not necessary that the tenant should be put out of possession, or that proceedings should be brought. A threat of eviction is sufficient, and if the tenant, in consequence of the threat, attorns to the claimant, he may set this up as an eviction by way of defence to an action for rent, subject to his proving the evictor's

title. There is no eviction, however, if the tenant gives up possession voluntarily. Quite recently, this Court in *Mangat Ram v. Sardar Meharban Singh* (1987) 4 SCC 319, to which one of us was a party, observed: (SCC p.327, para 11)

The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end.

See also : *Fida Hussain v. Fazal Hussain* (AIR 1963 MP 232 : 1963 MPLJ 248, *K.S.M. Guruswami Nadar v. N.G.Ranganathan* (AIR 1954 Mad 402), *S.A.A.Annamalai Chettiar v. Molaiyan* (AIR 1970 Mad 396: (1970) 2 Mad LJ 562: 1969 Ren CR 1114 : 1971 Ren CJ 215 and *Chidambara Vinayagar Devasthanam v. Duraiswamy* (ILR (1967) 1 Mad 624"

16. The decision rendered by the Apex Court will not apply to the facts of the present case. The revision petitioner's case is that the land belonged to the temple and the superstructure was put up by his father. It is not established by the revision petitioner that there was a threat of eviction by the temple to evict him from the lands to enable him to deny the title of the landlords. In fact the revision petitioner as tenant asserted his right as a tenant who is entitled to purchase the land from the temple under the Tamil Nadu City Tenants Protection Act as pleaded by him in the counter statement filed by him in RCOP No.33/1992.

17. In AIR 2005 Cal. 281 cited supra, a Division Bench of Calcutta High Court held that when the tenant due to ignorance of law paid rents to third party, it will not stand as estoppel against the tenant from denying the derivative title of the third party and from re-tendering rent to the real landlord.

18. This decision is also not applicable to the facts of the present case as the revision petitioner has categorically admitted the ownership of the landlord and paid rental arrears as is evident from Ex.P5.

19. The learned counsel for the revision petitioner strenuously contended that in a rent control proceedings, title disputes should not be decided by the Rent Controller as the same is outside the jurisdiction of the Rent Control Act. He further contended that the Rent Controller has gone into the title elaborately and held that the ownership lies with the landlord and the revision petitioner does not have title.

20. In (1990) 4 SCC 286 cited supra, the Hon'ble Supreme Court has held that by virtue of Section 10(2)(vii) read with the proviso to Section 10(1) of the Tamil Nadu Rent Control Act, the jurisdiction to decide the question of title is denied to the Rent Controller in a matter of eviction of tenant.

21. In 1997-1-L.W. 1 cited supra, this court held that for a petitioner seeking to evict a person who is in occupation of a premises, the petitioner will have to establish the rights to the relief and he must show that the occupant is a tenant and the petitioner is his landlord.

22. In 1996-1-L.W. 83 cited supra, this court held that adjudication on title can be decided only by a civil court and the Rent Controller has to only go into the question of whether the denial of title is bona fide or not.

23. Citing the above decisions, the learned counsel for the petitioner submitted that as the authorities below have adjudicated the issue of title in the rent control proceedings the same is without jurisdiction and the orders are liable to be set aside.

24. I am unable to accept the contentions of the petitioner. It is settled law that the Rent Controller has no jurisdiction to adjudicate on title and the Rent Controller has to only to decide the bona fide of denial of title by a tenant in a Rent Control proceedings under Tamil Nadu Rent Control Act, 1960.

25. It is true that the Rent Controller in the present case has gone into the question of title, but he has clearly observed in his order that the ownership of the petition building should not be gone into by him, still he could go into the question of prima facie title of the petition building. Therefore what was decided by the Rent Controller is only a prima facie title of the landlord and not the real title of the petition property which can be gone into by the trial court. Therefore on this ground, the revision petition cannot be adjudicated in favour of the tenant. That apart, the question of bona fide or otherwise of the denial of title by the revision petitioner was gone into by both the authorities and a finding was rendered that the denial is not bona fide in the light of Exs.P4 and P5. Therefore once it is established that the denial of title is not bona fide, then the tenant has to face the rent control proceedings but much to his detriment.

26. In the result, I do not find any merits to interfere with the orders of the authorities below. Consequently, the Civil Revision Petition is dismissed. No costs. C.M.P.No.10123/2003 is also dismissed, and V.C.M.P.No.3744/2005 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar, Small Causes Court, Chennai.104.

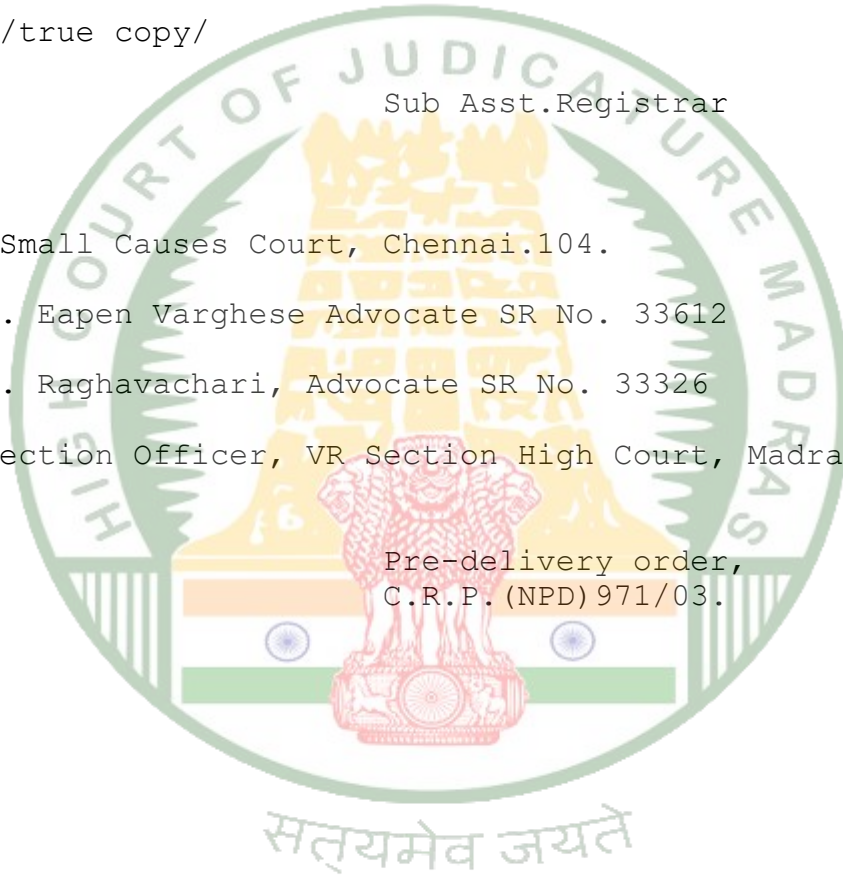
+ 1 cc to Mr. V. Eapen Varghese Advocate SR No. 33612

+ 1 cc to Mr. V. Raghavachari, Advocate SR No. 33326

+ 1 cc to the Section Officer, VR Section High Court, Madras.

TR(CO)
SR/1.9.2006

Pre-delivery order,
C.R.P. (NPD) 971/03.



WEB COPY